



August 13, 2019

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF REGULATORY CHANGES

DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

**TITLE 14. NATURAL RESOURCES
Division 2. Department of Conservation
Chapter 8. Mining and Geology
Subchapter 1. State Mining and Geology Board
Article 7. Financial Assurance Cost Estimate Appeals Procedures
Sections 3680 – 3690, 3691.1 – 3691.10,
and
Article 14. Appeals of Order to Comply with SMARA
Sections 3940 – 3948**

Pursuant to Public Resources Code (PRC), **Section 2760**, **NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) will consider the revision and approval of a revised **final draft** of proposed amended regulatory language of Title 14, of the California Code of Regulations (CCR), Sections:

3680 – 3690 and 3691.1 – 3691.10, pertaining to Financial Assurance Cost Estimate Appeals Procedures;

And approval of an **initial draft** of proposed amended regulatory language of Title 14, of the CCR, Sections:

3940 – 3948, pertaining to Appeals of Order to Comply with the Surface Mining and Reclamation Act (SMARA)

Following approval of the initial draft language and rulemaking package, a formal public comment period will begin for input on the proposed regulatory changes.

The date, time, and location of the public hearing are:

**Thursday, September 12, 2019 – 1:00 p.m.
San Diego State Building
1350 Front St. Rm. B109
San Diego, California 92101**

BACKGROUND

Financial Assurance Cost Estimate Appeals Procedures

Since the Surface Mining and Reclamation Act (SMARA) was enacted in 1975, surface mining operations within the state of California have been statutorily required to have a financial assurance cost estimate to provide funding for the mining operation's specific reclamation plan (PRC section 2770). On April 18, 2016, Governor Brown signed Assembly Bill (AB) 1142 into law and thereby enacted new reforms to SMARA including updating the process for financial assurance cost estimate appeals. The pertinent statute was further amended by Senate Bill (SB) 809 and AB 3257.

PRC section 2770 provides the process for financial assurance cost estimate appeals. The code section allows for an appeal of a denied financial assurance cost estimate by a lead agency to be filed with the State Mining and Geology Board (Board). Since AB 1142, the statutory section also allows for the Department of Mine Reclamation (DMR) to appeal a lead agency approved financial assurance cost estimate to the Board. This change ensures lead agencies are held accountable for taking the time to properly review and approve financial assurance cost estimates for reclamation plans.

Appeals of Orders to Comply with SMARA

PRC section 2774.1, also amended by AB 1142, defines the process of a lead agency, the Board acting as a lead agency, or DMR issuing notices of violation and/or orders to comply to mining operations that violate one or more aspects of SMARA. The process may include issuing notices, issuing orders to comply, conducting a public hearing to appeal an order to comply, and possible administrative penalties for noncompliance.

PRC section 2774.1 was also amended to include a process for a stipulated order to comply for mining operations that seek to fix any violations of SMARA that cannot be corrected in the standard time frame allotted by the statute, 30 days. This stipulated agreement between the lead agency, the Board acting as a lead agency, or DMR and the mining operation, whom committed the violation, is intended to give extra time to mine operators to fix violations with SMARA that may take some time to correct, without additional penalties.

The procedural requirements under PRC 2774.1, regarding the order to comply and enforcement process along with the proposed regulatory changes, are intended to harmonize statutory changes with the appeal process provided for in regulations.

CONTACT PERSONS

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AVAILABILITY OF DOCUMENTS

Please direct requests for components of the entire rulemaking file, including the Initial Statement of Reasons (ISOR), to Matthew Livers at the above address. Final versions of all the proposed amended regulatory language up for approval and associated rulemaking documents, including the ISOR, will be available for review and download approximately one week before the public hearing. For more information on the proposed amended regulations associated with Financial Assurance Cost Estimate Appeals Procedures and Appeals of Orders to Comply with SMARA please visit the SMGB website at:

<https://www.conservation.ca.gov/smgb>